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Total Number of Pages in This Submission

14

Application Number

10/022,755

Filing Date

12/13/01

First Named Inventor

Erik Lipson

Art Unit

3727

Examiner Name

Stephen Castellano

Attorney Docket Number

LPN-10203/03

ENCLOSURES (check all that apply)

- ☐ Fee Transmittal Form
- ☐ Fee Attached
- ☐ Amendment / Reply
- ☐ After Final
- ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
- ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

- ☐ Drawing(s)
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- ☐ Petition
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REQUEST FOR
REINSTATEMENT AND
SUPPLEMENTAL APPEAL
BRIEF

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm
or
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Date

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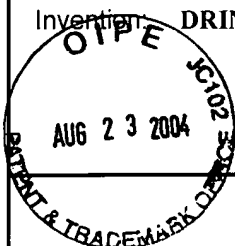
TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
LPN-10203/03

In Re Application Of: Erik Lipson

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/022,755	12/13/01	Stephen Castellano	25006	3727	

Invention: **DRINK CONTAINER WITH MOLDED STRAW AND METHOD OF MANUFACTURE**



COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$165.00

- ☐ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
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Judith M. Riley

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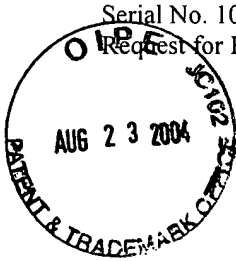
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Sharon Kaiser

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Serial No. 10/022,755
Request for Reinstatement of Appeal

Attorney Docket No. LPN-10203/03

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES**

Applicant: Erik Lipson

Serial No.: 10/022,755

Group Art Unit: 3727

Filed: December 13, 2001

Examiner: Stephen J. Castellano

For: DRINK CONTAINER WITH MOLDED STRAW AND METHOD
OF MANUFACTURE

**REQUEST FOR REINSTATEMENT
OF APPEAL AND SUPPLEMENTAL BRIEF**

Mail Stop Appeal Brief - Patents
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Alexandria, VA 22313-1450

Dear Sir:

Appellant has filed a Notice of Appeal, Brief and Corrected Brief. Instead of filing an answer, the examiner elected to withdraw the case from appeal and issue a new final office action, finally rejecting claims 1-11 and allowing claim 12. Pursuant to 37 CFR §1.193(b)(2)(ii), Appellant requests the Appeal be reinstated and attaches the following Supplemental Brief.

I. Real Party in Interest.

Appellant incorporates by reference Section I. from the Corrected Brief on Appeal.

II. Related Appeals and Interferences.

Appellant incorporates by reference Section II. from the Corrected Brief on Appeal.

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III. Status of Claims.

Claims 1-12 are presently pending. Claim 12 has been allowed. Claims 1-11 stand finally rejected and are the subject of the present appeal.

IV. Status of Amendments.

Appellant incorporates by reference Section IV. from the Corrected Brief on Appeal.

V. Summary of the Invention.

Appellant incorporates by reference Section V. from the Corrected Brief on Appeal.

VI. Issues.

The issues in this appeal are statutorily formulated in 35 U.S.C. §102 and 35 U.S.C. §103. Specifically, the issue is whether the invention of claims 1-3 and 6-8 is anticipated and unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 5,054,631 to Robbins, III. Another issue is whether the invention of claims 1 and 6 is anticipated and unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 4,830,204 to Lin. Yet another issue is whether the invention of claims 1, 2, 6 and 7 is anticipated and unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 5,188,283 to Gu and U.S. Patent No. 4,291,814 to Conn. Yet another issue is whether the invention of claims 1-11 is obvious and unpatentable under 35 U.S.C. §103 over U.S. Patent No. 4,607,755 to Andreozzi.

VII. Grouping of Claims.

For purposes of appeal, Appellant is not arguing the separate patentability of any of claims 1-11, and they therefore stand or fall together.

VIII. Argument.

With regard to the obviousness rejection of claims 1-11 over the single Andreozzi reference, Appellant incorporates by reference the entirety of paragraph 11 of Section VIII. of the Corrected Brief on Appeal (found on page 4 of the Corrected Brief). Since the rejection of claims 1-11 as

obvious over Andreozzi contained in the latest final office action issued by the Examiner in response to Appellant's Corrected Brief is identical to the same rejection made in the prior final office action, Appellant will not repeat the arguments made in the Corrected Brief as to why the rejection is flawed and why the claims are patentable over this reference. Accordingly, Appellant incorporates by reference the arguments made in the Corrected Brief found starting at the first full paragraph 6 and continuing on to the top of page 8.

The most recent office action contains a number of new §102(b) anticipation rejections. First, the Examiner finally rejects claims 1-3 and 6-8 as anticipated by Robbins, III. According to the examiner:

Robbins discloses a combination drinking container and straw comprising: a container having a top wall enclosing a chamber, a bottom, the top having an open top (at the first end of the straw at 62 providing fluid communication through the straw) and a groove formed in the top wall, a straw disposed in the groove, a first end (at 62) of the straw is in fluid communication with the chamber and a second end extends upwardly (shown in Figures 6 and 8). At least part of the configuration of the straw (the straw diameter) is defined by the configuration of the groove (the straw diameter must be less than the width of the groove).

Re claims 3 and 8, a portion of the straw is spaced above the top wall and forms a loop at 64.

Appellant will now discuss the numerous differences between the invention of claims 1-3 and 6-8 and the actual teachings of the Robbins reference. To begin with, both independent claims 1 and 6 (the other claims rejected under this reference are dependant upon either claim 1 or 6) require that the container have "an open top." While the Examiner reads Robbins as disclosing a container with an open top in Figures 6-8, a quick glance at the figures shows that this is manifestly not true. The disclosure, itself, identifies a "top portion 52" (column 6, lines 18-19), and Figure 6 shows how the top portion 52 closes off the top end of the container to form an enclosed chamber

for retaining fluid. In order to find an “open top” in Figure 6, the Examiner must resort to calling the upper end of the integral straw 62 formed on the top portion 52 an “open top,” but, of course, merely calling an open top something which is not an open top does not make it so.

In contrast, both claims 1 and 6 require that the container of the present invention have an open top. One example of the open top of the claimed invention is found in Figure 2 and referenced by numeral 15. In the embodiment depicted therein, the open top 15 may be closed off with a cap. However, in the examples found in Figure 10A through 10F, the top remains open. Obviously, the purpose of having an open top with an optional lid is so that the container may be refilled. In the case of Robbins’ Figure 6 container, the container is obviously first filled and then the top portion 52 applied thereto. The sole purpose of the straw portion 62 is to allow a user to withdraw a beverage from the container. Thus, the open top of Appellant’s invention and the upper end of the integral straw portion 62 are analogous neither in structure nor function. Hence, the reference fails to disclose or teach this aspect of claims 1-3 and 6-8.

A further difference between the claimed invention and that disclosed in Robbins is that Appellant’s claims 1 and 6 require that the container have “a wall enclosing a chamber,” and “a groove formed in said wall.” In the Robbins Figures 6-8 embodiment, the only structure that appears at all analogous to the claimed wall enclosing a chamber would be the container body 56. Yet, there is nothing remotely resembling the groove formed in the container body 56. The structure that the Examiner identifies as a groove, although not explicitly stated, could be the “elongate channel 58 which houses the integral straw 60 during periods of non-use” (column 6, lines 1-3). However, the elongate channel 58 is not disposed in anything remotely analogous to the container wall of the claims in question, but rather is disposed in the top portion 52 which closes the

top of Robbins' container. Accordingly, the reference fails to teach this aspect of the claimed invention.

The claims in question also require that "at least part of the configuration of the straw is defined by the configuration of the groove." In order to stretch the Robbins disclosure to somehow disclose this aspect of Appellant's invention, the Examiner is forced to maintain that the portion of the configuration of the straw which is defined by the "groove," is the "straw diameter," which "must be less than the width of the groove." As can readily be seen in Figure 7, the diameter of the straw in Robbins' container is certainly far less than the width of the groove. In fact, it is so far less than the width of the "groove" that it is not clear how the "groove" could possibly be said to "define" any part of the configuration of the straw, including the diameter. Once again, the reference fails to disclose an important aspect of the claimed invention.

Finally, both claims 1 and 6 require that the drinking end of the straw extend "upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the groove." As Figure 6 of Robbins makes it manifestly unclear, when the upper end of the straw extends upwardly from the container so that it is in the drinking position (shown in phantom), the straw is no longer disposed in the "groove." Indeed, when the straw is disposed in the "groove" via detents 68a and 68b, the upper end of the straw does not extend upwardly and may not be drunk from. Once again, the claimed limitation is simply not taught by the reference.

Appellant has identified at least four important aspects of the invention of claims 1-3 and 6-8 not taught or disclosed in the Robbins reference. Furthermore, there is no motivation found in this reference, or any of the other references of record, which would motivate one of skill in the art to make the extensive modifications of the actual Robbins teachings to achieve the claimed invention. Accordingly, claims 1-3 and 6-8 are neither anticipated by nor obvious over Robbins and are

patentable. Accordingly, Appellant respectfully requests the Board to reverse this ground of rejection and allow the claims to issue.

The most recent final office action contains a rejection of claims 1, 2, 6 and 7 as anticipated by “Gu and Conn.” No further explanation is provided. Since an anticipatory rejection cannot be made over a combination of references, it must be that the Examiner rejects these particular claims over either one of these references.

Considering the Gu reference, many of the same arguments made with regard to Robbins are applicable here. For example, the Board will note that the container taught by Gu does not have an open top. The various embodiments illustrated in Figures 1-4A all disclose containers with closed tops. All of them also illustrate an aperture formed in the closed top of the container with a straw sticking through it. Gu does disclose a groove in each of the embodiments, but, once again, the groove is disposed not in the wall of the container, but in the top. Once again, we do not see even part of the configuration of the straw defined by the groove. Rather, according to claim 1, the straw has “a diameter similar to that of said round hole in said first top tuck flap . . .” Finally, it appears that the upper portion of Gu’s straw is retained in the groove by a retaining flap or by a piece of tape. When this is removed, the end of the straw may extend upward from the groove so that a beverage can be sipped from the container. Of course, when the end of the straw is in this position, it is no longer in the groove, as required by the claims.

Accordingly, for the same reasons as applicable to the Robbins’ reference, the relevant claims differ from the reference in at least four important aspects. Once again, the claims are neither anticipated by nor rendered obvious over this reference. Accordingly, the Board should reverse this ground of rejection.

The Conn reference is quite similar to that of Gu and, once again, similar reasons apply as to why it does not disclose the claimed invention. Again, we find a container which has an enclosed top. Indeed, the reference describes the container as having “a top surface area” (3) (column 1, line 55) in a container which is “preferably formed of a suitable metal . . .” (Column 1, lines 56-57). In order to permit a beverage to be sipped from the container, the top surface area has an aperture 4A formed in it, through which a tube 6A extends. The tube 6A is interior and has an exterior drinking or sealing tube (9) attached to it. (Column 2, lines 1-29). An end of the exterior tube is bent and resides within a recessed groove area 8. Obviously, the grooved area is not formed in the wall of the container, but rather in the top. It appears from Figure 3 that the diameter of either tube is considerably smaller than the width of the groove area, which, in any case, does not define any part of its configuration. The exterior tube is normally bent so that it is confined to the groove and has a sealing tape to ensure that it remains there. When the tape is peeled away, the upper end of the tube may be extended so that it is in the drinking position. Of course, like the other two references, this means that the tube is no longer retained in the groove. Thus, this reference also fails to disclose at least four important features of the claimed invention.

Accordingly, the Conn reference neither anticipates nor renders obvious the claims in question and Appellant respectfully requests the Board to dismiss this ground of rejection as well.

Finally, claims 1 and 6 stand rejected as anticipated by Lin. Accordingly to the Examiner:

Lin discloses a combination drinking container and straw comprising: a container having a wall enclosing a chamber, a bottom, an open top, and a groove formed between the outer surface of the sidewall and an outturned portion of the lip of the upper edge and a downturned portion of the lip at the upper edge, a straw disposed in the groove, a first end (at 62) of the straw is in fluid communication with the chamber and a second end extends upwardly and within the groove (shown in Figures 2 and 3). Liquid may be sipped through from the container while the straw is disposed

in the groove. At least part of the configuration of the straw (the straw diameter) is defined by the configuration of the groove (the straw diameter must be less than the width of the groove).

Unlike the other three allegedly anticipatory references, the Lin patent does actually teach a container with an open top. The disposable cup and integrally formed straw described in the detailed description is but two paragraphs long (less than 20 lines). Because it is so brief, Appellant will now quote it in its entirety:

Referring to Fig. 1, the improved cup of the present invention has a plastic molded cup body 10 with an integrally formed hollow straw 20 which is disposed on the inner wall of said cup body 10 as shown in Fig. 2, Fig. 3 and Fig. 4. On the flanged rim 11 along the mouth of said cup body 10 is disposed an [sic] cut 110 which is located right at the place where the straw 20 extends over the mouth of said cup body 10, and the projecting portion 201 of said straw 20 is provided with a flexible bellow-like portion 21 which is bendable in any direction so that the projecting portion 201 can be received under part of the flanged rim 11, as shown in Fig. 2.

Thus, the straw 20 is readily available as long as the extended portion 201 is pulled out from its receiving position and extended straight or in any other way for use. Such arrangement enables people to make use of the straws in a more hygienic and convenient way.

As should be clear from reading this description and consulting the relevant figures, the reference discloses no structure even remotely corresponding to a groove, which is disposed in a wall of the container. Rather, what the reference actually teaches is a cutaway portion 110 formed in the rim of the cup so as to permit the projecting portion 201 of the straw 20 (integrally formed on the inner wall of the container, as can most clearly be seen in cross-sectional view of Figure 4) to exit the inside of the container. Clearly, the cutaway portion cannot possibly constitute a groove.

According to the Examiner, the groove is “formed between the outer surface of the sidewall and upturned portion of the lip at the upper edge and a downward portion of the lip at the upper edge . . .” He also finds “a straw disposed in the groove . . .” However, it is abundantly clear from

viewing Figures 1 and 2 that Lin's straw never comes in contact with "the outer surface of the sidewall," either in its storage position (shown in Figure 2) or when it is extended in use (as shown in Figure 1). If the area between the outer surface of the cup and the outward and downturned portions of the lip could be considered a groove, the straw simply is never disposed in it. In its storage position, it appears to be curled along the outer surface of the rim. In its extended position, it extends upwardly through the cutaway portion and does not touch either the rim or the outer surface of the container.

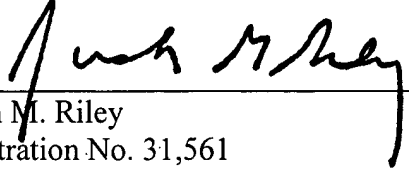
Since the Lin reference is deficient in failing to teach a groove with any portion of the straw disposed in it, obviously it also fails to teach at least two other important aspects of the invention which are dependent upon having a straw disposed in a groove. Since the straw is not disposed in a groove, no part of its configuration can be defined by a groove. Similarly, since Lin's straw is not disposed in a groove, it fails to disclose the aspect of the invention claimed in both claims 1 and 6 that liquid may be sipped through a drinking end of the straw "while the straw is disposed in the groove." Thus, we find an allegedly anticipatory reference which fails to disclose at least three important aspects of the claimed invention.

Accordingly, the Lin reference does not anticipate nor render obvious either claims 1 or 6. Appellant respectfully requests the Board to reverse this rejection, and allow the claims to issue.

In conclusion, Appellant has shown that the Andreozzi reference fails to disclose, teach or suggest critical limitations of claims 1-11. Accordingly, the obviousness rejection based on Andreozzi is insufficient and should be reversed for the reasons stated. Appellant has also shown that the four allegedly anticipatory references (Robbins, Gu, Conn, and Lin) each fail to disclose numerous critical limitations of claims 1-11. Accordingly, each of these anticipation rejections is fatally flawed and should be reversed. Appellant submits that claims 1-11 are in condition for

immediate allowance and respectfully requests the Board to reverse the Examiner's rejections and allow the claims to issue.

Respectfully submitted,



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Sharon Kaiser

IX. APPENDIX A

CLAIMS ON APPEAL

1. A combination drinking container and straw comprising:

a container having a wall enclosing a chamber, a bottom, an open top, and a groove formed in said wall; and

a straw disposed in the groove, the straw having a first end which is in fluid communication with the chamber of the container and a second drinking end which extends upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the groove, wherein at least part of the configuration of the straw is defined by the configuration of the groove.
2. The combination of claim 1 in which at least a portion of a pathway traversed by the straw is spaced from the container wall.
3. The combination of claim 2 wherein said portion is a loop.
4. The combination of claim 3 wherein said loop forms a handle.
5. The combination of claim 3 further comprising:

a lid for closing the top of the container, the lid having an aperture formed therethrough, said loop extending through said aperture to form a hinge.
6. A combination drinking container and straw comprising:

a container having a wall, a bottom, an open top, and a groove formed in the wall; and
a straw disposed in the groove, the straw having a first end which extends into the container and a second drinking end which extends upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the groove, wherein at least a part of the straw is held in position with respect to the container by the groove.

7. The combination of claim 6 in which at least a portion of a pathway traversed by the straw is spaced from the container wall.

8. The combination of claim 7 wherein said portion is a loop.

9. The combination of claim 8 wherein said loop forms a handle.

10. The combination of claim 8 further comprising:
a lid for closing the top of the container, the lid having an aperture formed therethrough, said loop extending through said aperture to form a hinge.

11. A combination drinking container and straw comprising:
a container having an outer wall, a bottom, an open top, and a groove disposed in an outer surface of the outer wall;
a lid for closing the top of the container, the lid having an aperture formed therethrough;
a straw disposed in the groove, the straw having a first end which extends into the container to terminate proximate the closed bottom thereof and a second end which extends

upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the groove, wherein the configuration of the straw is defined by the configuration of the retaining member; and

a loop formed by the straw proximate the container top such that, when said straw extends through said aperture, said loop hinges said lid onto said combination even when said lid is removed from said container.